

Message Text

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TO AMEMBASSY WELLINGTON

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USDAO WELLINGTON

C O N F I D E N T I A L STATE 041398

CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, US, NZ

SUBJECT: NPW REACTOR INCIDENT LIABILITY

REFS: A. STATE A-292, JANUARY 16, 1975

B. USDAO WELLINGTON 130030Z JUL 73

C. STATE 268834

1. BY REF A WE ADVISED EMBASSY THAT PRESIDENT FORD
SIGNED INTO LAW PL 93-513, A JOINT CONGRESSIONAL RESOLU-
TION ASSURING COMPENSATION FOR DAMAGES CAUSED BY NUCLEAR
INCIDENTS INVOLVING THE NUCLEAR REACTOR OF A UNITED
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STATES WARSHIP, AND PROVIDED COPIES OF THE LAW AND THE

ASSOCIATED JCAE REPORT. WITH PASSAGE OF PL 93-513 AND RESOLUTION OF THE ICJ ISSUE, WE WOULD LIKE TO RENEW OUR EFFORTS AT SENIOR LEVEL TO RESOLVE THE NPW VISIT IMPASSE WITH NEW ZEALAND.

2. WITH PASSAGE OF THIS LAW WE ARE NOW IN A POSITION TO APPROACH GONZ ON THE ONLY POINT THEY HAVE OFFICIALLY STATED WAS STANDING IN THE WAY OF APPROVAL OF US NPW VISITS TO NEW ZEALAND. THAT POINT IS THEIR INSISTENCE THAT THE US ACCEPT AN ABSOLUTE LIABILITY STANDARD FOR NUCLEAR INCIDENTS INVOLVING THE REACTOR OF OUR NUCLEAR POWERED WARSHIPS. THIS DEMAND HAS BEEN REPEATED ON NUMEROUS OCCASIONS, THE MOST RECENT OF WHICH WAS A DISCUSSION BETWEEN DEPARTING US DEFENSE ATTACHE AND NEW ZEALAND SECDEF ROBERTSON, AS REPORTED REF B. IN THOSE DISCUSSIONS SECDEF ROBERTSON INDICATED THAT THERE WAS NO CONCERN IN NEW ZEALAND OVER NPW SAFETY BUT THAT RESOLUTION OF THE LIABILITY QUESTION REMAINED AS THE STUMBLING BLOCK TO NPW PORT ENTRY. TO THE DEGREE THAT THE WORLD COURT CASE INVOLVING AUSTRALIA, NEW ZEALAND, AND FRANCE OVER NUCLEAR WEAPON ATMOSPHERIC TESTING MAY HAVE INFLUENCED THE GONZ ON NPW PORT ENTRY, IT IS NO LONGER AN ISSUE OWING TO THE DECEMBER 20, 1974 DISMISSAL OF THE CASE.

3. IN ANTICIPATION OF THE PASSAGE OF THIS NEW LEGISLATION WE HAVE BEEN ACTIVELY RAISING THE NPW PORT ENTRY ISSUE WITH NEW ZEALAND REPRESENTATIVES VISITING WASHINGTON. THE MATTER WAS PRESENTED TO THE CHIEF OF THE NAVAL STAFF, RADM THORNE, IN OCTOBER 1974 AND TO SECDEF ROBERTSON IN NOVEMBER 1974. WE THEREFORE ENVISION EMBASSY MAKING AN APPROACH TO GOA AT A SENIOR LEVEL AND TRANSMITTING COPIES OF THE NEW LAW AND JCAE REPORT UNDER AIDE MEMOIRE. WE DEFER TO EMBASSY ON PRECISE TIMING AND TACTICS, BUT CONSIDER IT DESIRABLE FOR APPROACH TO INCLUDE DISCUSSIONS BETWEEN AMBASSADOR AND MINDEF/MFA.

4. AIDE MEMOIRE SHOULD MAKE FOLLOWING POINTS:

A. AFTER SEVERAL YEARS OF EFFORT, USG IS IN A POSITION TO
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PROVIDE NEW ASSURANCES CONCERNING NPW REACTOR INCIDENT LIABILITY OWING TO LEGISLATIVE AUTHORITY WHICH HAS RECENTLY BEEN ENACTED.

B. ATTACHED IS A COPY OF RECENTLY ENACTED US LEGISLATION PERTAINING TO THE SETTLEMENT OF CLAIMS WHICH MIGHT ARISE IN THE UNLIKELY EVENT OF A NUCLEAR INCIDENT INVOLVING THE NUCLEAR REACTOR OF A UNITED STATES WARSHIP. A DIS-

CUSSION OF THE PURPOSE OF THIS LEGISLATION IS CONTAINED IN THE OCTOBER 16, 1974, REPORT BY THE JOINT CONGRESSIONAL COMMITTEE ON ATOMIC ENERGY, A COPY OF WHICH IS ALSO ATTACHED. AS OF DECEMBER 6, 1974, THE PROVISIONS OF THIS LEGISLATION ARE IN EFFECT FOR ALL UNITED STATES NUCLEAR POWERED WARSHIPS ENTERING NEW ZEALAND AND OTHER FOREIGN PORTS.

C. THE NEW LAW, PL 93-513, PROVIDED THAT THE VALIDITY (OR MERIT) OF ANY CLAIM ARISING OUT OF A NUCLEAR POWERED WARSHIP REACTOR INCIDENT WILL BE DECIDED BY THE UNITED STATES ON THE BASIS OF ABSOLUTE (NO-FAULT) LIABILITY. THIS PRINCIPLE WILL BE APPLIED EVEN THOUGH NEW ZEALAND MAY NOT HAVE IN EXISTENCE ANY RELEVANT LEGISLATION ON THE SUBJECT.

D. AS A BILL WHICH WAS ORIGINATED IN AND PASSED BY THE CONGRESS AND SIGNED BY THE PRESIDENT, THIS LEGISLATION IS TANGIBLE EVIDENCE THAT THE UNITED STATES IS PREPARED TO SETTLE MERITORIOUS CLAIMS FOR NUCLEAR REACTOR RELATED DAMAGE INVOLVING ITS NUCLEAR POWERED WARSHIPS PROMPTLY AND ON A FAIR AND EQUITABLE BASIS.

E. THIS LEGISLATION IS DESIGNED TO CLARIFY APPLICATION OF A LEGAL PRINCIPLE AND NOT BECAUSE THE UNITED STATES CONSIDERS A NUCLEAR POWERED WARSHIP REACTOR ACCIDENT EVEN REMOTELY POSSIBLE. THESE SHIPS HAVE A REMARKABLE RECORD, ACCUMULATING TO DATE OVER 1250 YEARS OF REACTOR OPERATION WITHOUT AN ACCIDENT. WITH 127 NAVAL REACTORS IN OPERATION, US NUCLEAR POWERED SHIPS HAVE VISITED OVER 30 COUNTRIES AND 85 FOREIGN PORTS IN COMPLETE SAFETY.

F. WITH ENACTMENT OF PL 93-513, COUNTRIES WHICH GRANT CONFIDENTIAL

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PORT ENTRY TO US NPW NOW HAVE BOTH A POLITICAL AND A STATUTORY ASSURANCE REGARDING HOW THE US WILL DEAL WITH NPW REACTOR ACCIDENT CLAIMS.

G. WHEN RESUMED, VISITS BY US NUCLEAR POWERED WARSHIPS TO NEW ZEALAND WILL CONTINUE TO BE CONDUCTED IN ACCORDANCE WITH THE ASSURANCES CONTAINED IN THE "STATEMENT BY THE UNITED STATES GOVERNMENT ON THE OPERATION OF US NUCLEAR POWERED WARSHIPS IN FOREIGN PORTS." THIS IS THE STATEMENT ACCEPTED BY THE GONZ FOR PREVIOUS VISITS BY US NPW. THE NEW LEGISLATION IS AN ELABORATION OF THE CLAIMS PROVISION CONTAINED IN PARAGRAPH 3 OF THE STATEMENT AND IS NOW IN EFFECT.

H. THE US NAVY IS INCREASINGLY CONVERTING TO NUCLEAR

POWER. NEARLY A THIRD OF OUR COMBATANT FLEET, INCLUDING OUR MOST MODERN SHIPS, IS NOW NUCLEAR POWERED. IN ADDITION, CONGRESS HAS RECENTLY PASSED AND THE PRESIDENT HAS SIGNED A LAW WHICH EFFECTIVELY REQUIRES THAT ALL FUTURE MAJOR COMBATANTS BE NUCLEAR POWERED. NPW'S ARE IDEALLY SUITED TO OPERATIONS IN THE SOUTH PACIFIC AND INDIAN OCEANS, WHERE DISTANCES ARE VAST AND OUR LOGISTIC LINES EXTREMELY LONG. ROUTINE OPERATIONS OF NPW IN THESE AREAS CAN BEST BE CONDUCTED IF WE CAN DEPEND ON OCCASIONAL ACCESS TO VARIOUS PORTS, PARTICULARLY THOSE IN ALLIED COUNTRIES WHERE DEFENSE RELATIONSHIPS ARE CLOSE (SUCH AS IN ANZUS).

I. THE USG HAS, AFTER CONSIDERABLE EFFORT, OBTAINED LEGISLATION WHICH RESOLVES THE LEGAL QUESTION WHICH HAS CONCERNED THE GONZ. WE WOULD HOPE THE GONZ NOW WILL SEE ITS WAY CLEAR TO OPENING SELECTED NEW ZEALAND PORTS TO AMERICAN NUCLEAR POWERED SHIPS.

5. EMBASSY SHOULD POINT OUT THAT AS OF JANUARY 1975, IT WILL BE THREE YEARS SINCE GONZ REFUSED US NPW VISIT BECAUSE THEY WANTED AN ABSOLUTE LIABILITY GUARANTEE FOR AN NPW REACTOR ACCIDENT. IN VIEW OF OUR NEW LIABILITY ASSURANCES, PERFECT NPW SAFETY RECORD, AND ANZUS DEFENSE RELATIONSHIP, WE BELIEVE THAT THE TIME HAS COME FOR NEW ZEALAND TO RESOLVE THIS ISSUE. YOU MAY FURTHER NOTE THAT IN THE RECENT ANZUS OFFICIALS MEETING IN WASHINGTON, THE CONFIDENTIAL

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NEW ZEALAND REPRESENTATIVE, ASST SECRETARY MFA, EXPRESSED GONZ CONCERN THAT US WAS NOT DOING ENOUGH TO COUNTER SOVIET ACTIVITIES IN INDIAN OCEAN. (SEE REF C.) WE ARE ATTEMPTING TO DO THIS WITHIN OUR AVAILABLE RESOURCES. THIS WILL INEVITABLY INVOLVE THE USE OF NPW AS IS CURRENTLY BEING DEMONSTRATED BY THE OPERATION OF USS ENTERPRISE AND USS LONG BEACH IN THE INDIAN OCEAN. FOR US TO DO THIS WE MUST BE ABLE TO CALL ON FRIENDLY PORTS IN THE AREA.

6. PLEASE POUCH DEPARTMENT COPY OF AIDE MEMOIRE AFTER DELIVERY AND CABLE GONZ RESPONSE. KISSINGER

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